



October 30, 2006

**VIA EXPRESS MESSENGER**

Jeff Pursley  
Director  
Nebraska Public Service Commission  
300 The Atrium, 1200 N Street  
Lincoln, NE 68509-4927

**Re: Application No. 911-026**

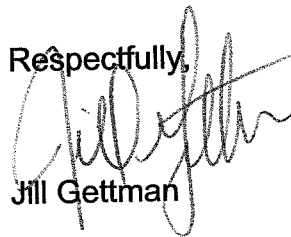
Dear Mr. Pursley:

Enclosed for filing please find the original and six copies of Qwest Communication Corporation's Comments in the above-entitled action. Also enclosed is an extra copy of the Comments to be file-stamped and returned to the undersigned in the self-addressed envelope.

Thank you for your assistance with this matter.

Please feel free to call me if you have any questions.

Respectfully,



Jill Gettman

cc: Robert Lanphier (via electronic mail)  
Tim Goodwin, Esq. (via electronic mail)

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

**In The Matter Of The Nebraska Public Service Commission, On Its Own Motion, Seeking To Determine Enhanced Landline 911 Surcharge Payment Requirements For Interconnected Voice Over Internet Protocol Providers.**

**Application No. 911-026**

**QWEST COMMUNICATIONS CORPORATION'S COMMENTS**

Qwest Communications Corporation ("QCC") submits comments as directed by the Commission's Order Opening Docket, Seeking Comments and Scheduling Hearing, dated September 26, 2006, as follows:

***Introduction***

QCC welcomes the opportunity to comment on these issues. QCC believes that the application of a 911 surcharge should be implemented and applied in a manner consistent with Nebraska statutes. QCC has two concerns about the Commission's proposal to impose the 911 surcharge on "interconnected VoIP"<sup>1</sup> services , including:

(1) The Nebraska statutes as currently drafted do not support the imposition of the 911 surcharge on customers purchasing interconnected VoIP ; and (2) The Commission is

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<sup>1</sup> QCC here assumes the Commission has applied the same definition to the term "interconnected VoIP" as the FCC set forth in *In the Matters of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report And Order And Notice Of Proposed Rulemaking, 20 FCC Rcd 10245; 2005 FCC LEXIS 3209; 36 Comm. Reg. (P & F) 1, FCC Release No. FCC 05-116 (June 3, 2005), ¶ 24 ("VoIP 911 Order"), namely "an interconnected VoIP service is one we define for purposes of the present Order as bearing the following characteristics: (1) the service enables real-time, two-way voice communications; (2) the service requires a broadband connection from the user's location; n76 (3) the service requires IP-compatible CPE; n77 and (4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN." (emphasis in original). See also Docket No. NUSF-1, Progression Order No. 18, p. 2, n.4 (September 26, 2006).

proposing to examine the issues of whether VoIP providers should collect and remit NUSF surcharges in the same proceeding as the issues in this docket regarding whether VoIP providers should collect and remit a 911 surcharge, even though the statutory underpinnings for 911 surcharges and NUSF are distinct.

**1. *The Nebraska Emergency Telephone Communications Systems Act Does Not Contemplate Interconnected VoIP Providers Collecting and Remitting Landline 911 Surcharges Imposed By Governing Bodies.***

The Nebraska Emergency Telephone Communications Systems Act (the “Act”) is based on “telephone communications.” The Act contains the word “telephone” in its title. Neb. Rev. Stat. § 86-435 permits the imposition of a surcharge “on each local exchange access line physically terminating in the governing body’s 911 service area.” “Local exchange access line” is in turn defined by section 86-427 as “any telephone line that has the ability to access local dial tone and reach a public safety answering point by dialing 911.” Thus, the questions facing the Commission are: (1) whether VoIP services constitute “telephone lines” under the Act, and (2) whether VoIP services “physically terminate” in any particular 911 service area.

Assuming that “telephone” as used in the Act equates to “telecommunications” elsewhere in Nebraska and federal law, VoIP services cannot be telecommunications services. Moreover, if “telephone” has a more narrow meaning than “telecommunications,” VoIP services certainly do not constitute a “telephone line.” VoIP services are not traditional “telephone” services, and do not necessarily physically terminate to a line in any particular location. VoIP services are not dependent on the location of a telephone line, but rather only the availability of a broadband connection, which can be obtained in many different locations, often with wireless broadband

without a "line" at all. In addition, most interconnected VoIP services lack the ability to provide precise locations for the termination of those communications.

VoIP is a service or application that enables real-time, two-way voice communications over the Internet between two or more VoIP subscribers, and between VoIP subscribers and users of "Plain Old Telephone Service" ("POTS") that uses the conventional "Public Switched Telephone Network" ("PSTN"). To enable communications between VoIP subscribers and POTS subscribers, the format of the communications is "converted" from the "Internet Protocol" to a different protocol used with the PSTN. VoIP offers subscribers numerous capabilities unavailable with POTS, such as Internet-based call log management. In fact, VOIP is, technically speaking, not accurately described as a service, but rather as an "application" of what the FCC refers to as "IP-enabled services."

Under the existing federal regulatory framework, VoIP is an information service.

In the limited context of the Federal Universal Service Fund, the, FCC stated:

The Commission has not yet classified interconnected VoIP services as "telecommunications services" or "information services" under the definitions of the Act. Again here, we do not classify these services. To the extent interconnected VoIP services are telecommunications services, they are of course subject to the mandatory contribution requirement of section 254(d). Absent our final decision classifying interconnected VoIP services, we analyze the issues addressed in this Order under our permissive authority pursuant to section 254(d) and our Title I ancillary jurisdiction. Specifically, we find that interconnected VoIP providers are "providers of interstate telecommunications" under section 254(d), and we assert the Commission's permissive authority to require interconnected VoIP providers "to contribute to the preservation and advancement of universal service" because "the public interest so requires."<sup>2</sup>

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<sup>2</sup> *In the Matter of Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; IP-Enabled Services*, 21 FCC Rcd 7518; 2006 FCC LEXIS

Under the current framework, the Act does not allow for the 911 surcharge to be assessed by interconnected VoIP service providers.<sup>3</sup> In other jurisdictions, QCC collects and remits 911 fees from its VoIP subscribers when the underlying statute clearly embraces VoIP; that is not the situation under the existing Nebraska statute.

**2. *Requiring Interconnected VoIP Providers to Collect and Remit Landline 911 Surcharges Imposed By Governing Bodies Is Not Likely Pre-Empted by Federal Law.***

In paragraph 52 of its VoIP 911 Order, the FCC recognized that state authorities may require carriers to contribute to 911 funding. To the extent that the FCC has occupied the field of VoIP regulation, the FCC appears to have delegated its authority – at least to some extent – to state and local government for the purposes of funding 911 services. Thus, the question of the extent to which the FCC has generally preempted the field of VoIP regulation is likely only an academic exercise in this docket.<sup>4</sup> The key question is whether the existing Nebraska statutory framework permits a competitively neutral, workable contribution system for VoIP. As noted above, Qwest believes the Act needs modifications before a 911 surcharge is assessed in connection with interconnected VoIP services.

**3. *The Nebraska Emergency Telephone Communications Systems Act Does Not Permit The Imposition Of Landline 911 Surcharges On The Wholesale Providers With Whom Interconnected VoIP Providers Contract To Provide Service.***

As an initial matter, the term “wholesale provider” in the Commission’s question

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3668, FCC Release No. 06-94 (June 27, 2006) (the “FCC Contribution Order”), ¶ 35 (footnotes omitted).

<sup>3</sup> This is particularly true in QCC’s case, which, as discussed below, already pays Nebraska 911 surcharges on primary rate interface services it purchases from Qwest Corporation, its RBOC affiliate.

<sup>4</sup> The issues of preemption regarding VoIP services may be somewhat different in other dockets, for example, NUSF-1.

may need some clarification. The way QCC purchases connectivity with the PSTN and pays 911 surcharges in Nebraska demonstrates that this question must be approached very carefully. To obtain connectivity to the PSTN, and therefore to 911 services, QCC purchases retail PRI trunks from Qwest Corporation ("QC") that are provisioned from the QCC enhanced service provider point of presence ("ESP POP"), terminating at a QC end office with connectivity to a Selective Router ("SR"). As a VoIP provider, QCC's ESP POP is treated as an end-user customer for the purpose of purchasing the retail PRI trunks based upon the "ESP exemption".<sup>5</sup> QC accordingly assesses and QCC pays a 911 surcharge for each retail PRI trunk purchased, which in turn is remitted to the appropriate PSAP authorities by QC.

However, a review of the Nebraska statutes indicates that the Legislature did not contemplate the 911 surcharge to be assessed on wholesale services – if "wholesale" is defined as services sold to carriers, not end users. As noted above, Neb. Rev. Stat. § 86-435 permits the assessment of surcharges on each local exchange access line. Setting aside the issue of whether VoIP services either are or are not "local exchange access lines," the surcharge may not be assessed on wholesale providers under the statutory scheme. Section 86-436 clearly places the obligation to pay surcharges on "service users," which are defined in section 86-434 as "any person who is provided local exchange access line service in the state." The "service supplier" obligated to bill the "service user" is defined by section 86-432 as "any person providing 911 service in the state." In turn, section 86-428 defines 911 service as "a telephone service which provides a service user with the ability to reach a public safety answering point by

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<sup>5</sup> See, e.g., *MTS & WATS Market Structure*, 97 FCC 2d 682, 711-83, ¶ 77-83 (1983) (subsequent history omitted); and *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, FCC Release No. 88-151 (1988).

dialing the digits 911 for the purpose of reporting emergencies.” These statutes do not contemplate any surcharge being assessed by wholesale providers and paid by wholesale buyers of telecommunications or information services. The Act’s silence as to wholesale providers prevents providers like QCC from paying 911 service charges twice: once to QC in connection with the purchase of PRI services, and once to the Commission after collecting surcharges from its VoIP customers. If the Commission imprudently fills in the blanks left by the Act, some carriers like QCC may be double-assessed for 911 surcharges.

**4. *The Statutory Underpinnings of USF and 911 are Separate and Distinct and Should be Considered in Separate Proceedings.***

In the procedural schedule contained within this docket and Application No. NUSF-4, Progression Order No. 18, the Commission has scheduled a hearing on both Applications for December 5, 2006. It is not clear to QCC how the Commission intends to manage two hearings on separate matters at the same time and place. USF and 911 are two separate topics, with two separate statutory schemes, and two different legal histories. While these two dockets share the topic of VoIP, the questions of federal preemption, state statute authorization, and whether surcharges may be assessed on non-telecommunications services differ, and should not be considered in a single proceeding. Qwest urges the Commission to take care to evaluate these two issues separately, even if that consideration requires setting separate hearings.

***Conclusion***

Qwest favors competitively neutral support for 911 services. However, the Act as currently written does provide the appropriate legal framework to extend the assessment and remittance of the 911 surcharge on Interconnected VoIP providers.

Thus, Qwest urges the Commission to wait until the Legislature has modified the Act to include interconnected VoIP services within the statutory language.

Dated: Monday, October 30, 2006.

**QWEST COMMUNICATIONS CORPORATION**

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